not prevent the application to it, after its creation, of common-law principles of justice, in situations for which the legislature could not, or did not, provide.[14] The only means to prevent the statute's becoming an instrument for the defrauding of voters is to declare vacant the position of a nominee who makes such a use of it.[15] Furthermore, the statute itself recognizes certain causes creating vacancies, and their enumeration is not necessarily exclusive.[16] The same enumeration in regard to public officers does not annul the common-law ground for removal when an office with inconsistent duties is accepted.[17] The right or status of a nominee is of a new and peculiar character which calls for the application of a new means of attaining justice.[18] It seems, therefore, that the appearance of a man's name under the name of a party which he is actively opposing is such a fraud on the voters as to justify a court in declaring vacant his position on the ballot.

EMPLOYEES WITHIN THE SCOPE OF THE FEDERAL EMPLOYERS' LIABILITY ACT OF 1908. — The federal Employers' Liability Act of 1906 was held unconstitutional because interstate commerce was not sufficiently benefited by imposing an extraordinary liability upon an interstate railroad in favor of employees whose work might in no way concern such commerce.[1] It is submitted that an employers' liability act protecting all workmen whose efficiency might substantially affect interstate commerce would be valid in view of recent decisions that the Safety Appliance Act[2] can constitutionally include all cars of a train in which there is an interstate car,[3] or even a train purely intra-

[14] See State *ex rel.* Gray *v.* Olsen, 137 N. W. 561, 564 (S. D., 1912), where the majority denied relief on the ground that the party offered no nominees to take the place of those sought to be ousted.

[15] Party custom is here immaterial except as to who may fill the vacancy. The inquiry is solely whether voters are deceived. The principle would not extend to a nomination obtained by fraud, for the nominee might still represent the party principles. It might seem desirable, however, to allow the party to avoid such a nomination. Fraud in obtaining signatures to secure a place on the primary ballot is immaterial after the nomination is made. Marks *v.* Davis, 125 Pac. 344 (Kan., 1912). But it would seem that such signatures might be withdrawn before the nomination.

[16] But see State *ex rel.* Vance *v.* Wilson, 30 Kan. 661, 2 Pac. 828.

[17] Attorney General *ex rel.* Moreland *v.* Common Council, 112 Mich. 145, 70 N. W. 450; MICH., COMP. LAWS, 1897, 2993, 3001 *et seq.* *Cf.* State *ex rel.* Crawford *v.* Anderson, 136 N. W. 128 (Ia., 1912). Insanity may be a ground for removal though not specially provided for. Long *v.* Bowen, 15 Ky. L. Rep. 276, 23 S. W. 343.

[18] It is usually held that a party name cannot be chosen so similar to that of an existing party as to deceive the voters. Phillips *v.* Curley, 28 Colo. 34, 62 Pac. 837. Only an extension of this principle is called for. See also *In re* Folks, 134 N. Y. App. Div. 376, 119 N. Y. Supp. 71.

[1] Employers' Liability Cases, 207 U. S. 463, 28 Sup. Ct. 141. See 25 HARV. L. REV. 548.

[2] Act of March 2, 1893, U. S. COMP. STAT., 1901, p. 3174, as amended March 2, 1903, U. S. COMP. STAT., SUPP. 1909, p. 1143. In terms this statute applies to all cars used on any railroad engaged in interstate commerce and gives every employee a right of action. This seems as broad as the first Employers' Liability Act, but the construction of the court saves it. Southern Ry. Co. *v.* United States, 222 U. S. 20, 32 Sup. Ct. 2.

[3] Norfolk & Western Ry. Co. *v.* United States, 177 Fed. 623; United States *v.* International & G. N. R. Co., 174 Fed. 638.

state if its operation might directly affect an interstate train.[4] For interstate commerce is as much dependent upon the security of such workmen as upon the security of the rolling stock. And protection of human instrumentalities through the imposition of legal liability in their favor is almost as direct as the protection of mechanical instrumentalities through requiring safety appliances. But though the broadest statute possible was probably desired, the Employers' Liability Act of 1908[5] only includes employees of interstate railroads injured while employed in interstate commerce by such railroads, — a limitation to such employees as are clearly within federal protection.[6] It has been pointed out that the fact that the injury is from an interstate source is immaterial since the power to regulate is derived from the effect of the injury.[7] And the requirement that the carrier be engaged in interstate commerce is superfluous since if the employee is so engaged, the carrier is also.[8] The wording of the statute excludes the possibility of an employee's acquiring an interstate status protecting him constantly and requires employment in interstate commerce at the moment he is injured.[9] Moreover, "employed" means actual engagement in the work, as is shown by cases excluding an employee traveling on a train, whether interstate or not, to reach an interstate train which he is to operate.[10]

A man can only be employed in interstate commerce by railroad, if in some way his work involves a relation with an interstate train. A train is interstate within the act if it includes an interstate car.[11] A car containing a single article of interstate commerce is interstate [12] although the car does not go outside the state.[13] Though a car is empty,[14] or merely being delivered to make up a train,[15] its operation may be interstate commerce.

Although the car is interstate and the employee has a substantial connection with its operation, the act requires actual employment in interstate commerce. Any employment, such as that of the crew, closely affecting the movement of an interstate train,[16] is so directly connected with its operation as to be within the act. This would include an employee cutting an intrastate car out of an interstate train.[17] Moreover,

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[4] Southern Ry. Co. *v.* United States, *supra.*

[5] Act of April 22, 1908, U. S. COMP. STAT., SUPP. 1909, p. 1171.

[6] Second Employers' Liability Cases, 223 U. S. 1, 32 Sup. Ct. 169.

[7] Second Employers' Liability Cases, *supra*; Colasurdo *v.* Central R. of New Jersey, 180 Fed. 832.

[8] Colasurdo *v.* Central R. of New Jersey, *supra.*

[9] See Pedersen *v.* Delaware, L. & W. R. Co., 197 Fed. 537, 540; Colasurdo *v.* Central R. of N. J., 180 Fed. 832, 837; 25 HARV. L. REV. 740. *Contra*, Behrens *v.* Illinois Central R. Co., 192 Fed. 581. This case overlooks the fact that though Congress could have gone this far, it did not.

[10] Feaster *v.* Philadelphia & Reading Ry. Co., 197 Fed. 580; Lamphere *v.* Oregon R. & Navigation Co., 193 Fed. 248. *Cf.* Bennett *v.* Lehigh Valley R. Co., 197 Fed. 578; Zachary *v.* North Carolina R. Co., 156 N. C. 496, 72 S. E. 858.

[11] Neil *v.* Idaho & W. N. R. Co., 125 Pac. 331 (Idaho).

[12] See THORNTON, FEDERAL EMPLOYERS' LIABILITY AND SAFETY APPLIANCE ACTS, 38.

[13] Norfolk & Western R. Co. *v.* Pennsylvania, 136 U. S. 114, 10 Sup. Ct. 958. See 25 HARV. L. REV. 741.

[14] Malott *v.* Hood, 201 Ill. 202, 66 N. E. 247.

[15] Mobile, etc. R. Co. *v.* Bromberg, 141 Ala. 258, 37 So. 395.

[16] Such as train dispatchers, telegraph operators, switchmen, signalmen, etc.

[17] Carr *v.* New York Central & H. R. R. Co., 136 N. Y. Supp. 501. *Cf.* Winkler *v.*

work involving the every-day care of the train or roadbed,[18] or the care of subjects of transportation,[19] is employment in interstate commerce. Thus, an employee in a roundhouse lifting ice to place it aboard a train for the use of interstate passengers is within the act.[20] But a line is drawn by a recent case excluding the crew of an intrastate train hauling water to a tank from which other employees were to supply interstate trains. *Missouri, Kansas, & Texas Ry.* v. *Fesmire*, 150 S. W. 201 (Tex., Ct. Civ. App.). The crew were only concerned with the intrastate carriage of the water and had no direct connection with the interstate train.

The repair of interstate instrumentalities raises somewhat more doubtful questions. Workmen making slight repairs to interstate cars are within the act, because they plainly assist the car on its journey.[21] But if the repair necessitates the car's withdrawal from use for a considerable time the journey has ceased, and repair is no more interstate commerce than is manufacture of new cars.[22] Work on the roadbed is difficult to classify. Men building a new roadbed, as men manufacturing new cars, though facilitating interstate commerce do not so directly assist in the transportation of the subjects thereof as to come within the act. Consequently in a recent case it was held that work on a bridge on which a track to carry interstate trains was to be laid was not interstate commerce. *Pedersen* v. *Delaware, Lackawanna & Western R. Co.*, 197 Fed. 537 (C. C. A., Third Circ.). It seems impossible, however, to distinguish in this regard slight repairs to a track over which interstate trains pass from slight repairs to an interstate car,[23] but a man apparently making such repairs was refused recovery in a recent case. *Pierson* v. *New York, Susquehanna & Western R. Co.*, 85 Atl. 233 (N. J., Ct. Err. and App.).

WHAT LAW GOVERNS MARITIME LIENS. — It is usually for the advantage of all parties having an interest in a ship, whether such interest be in the nature of ownership or security, that she should be actively engaged in commerce and not left to rot in port. But to continue in active employment she must have supplies and services. To obtain them she

Philadelphia & Reading Ry., 4 Penn. (Del.) 80, 53 Atl. 90. *Contra*, Van Brimmer *v.* Texas & Pacific Ry. Co., 190 Fed. 394.

[18] Such as car-wipers, car-inspectors, porters, track-walkers, etc.

[19] Such as ticket-sellers, baggagemen, gatemen, station porters, etc. But see Zachary *v.* North Carolina R. Co., 156 N. C. 496, 500, 72 S. E. 858, 859. A clerk taking the numbers of interstate cars after they have reached the end of their journey has been held without the act. St. Louis, etc. Ry. *v.* Seale, 148 S. W. 1099 (Tex., Ct. Civ. App.).

[20] Freeman *v.* Powell, 144 S. W. 1033 (Tex., Ct. Civ. App.).

[21] Johnson *v.* Great Northern Ry., 178 Fed. 643; Darr *v.* Baltimore & Ohio R. Co., 197 Fed. 665. *Cf.* Delk *v.* St. Louis & S. F. R. Co., 220 U. S. 580, 31 Sup. Ct. 617. Though an extreme example, it would seem that a physician removing a cinder from the eye of an engineer about to start on an interstate run would be engaged in interstate commerce although perhaps not an "employee" within the act.

[22] Heimbach *v.* Lehigh Valley R. Co., 197 Fed. 579. *Contra*, Northern Pacific Ry. *v.* Maerkl, 198 Fed. 1. This decision seems indefensible.

[23] Zikos *v.* Oregon R. & Navigation Co., 179 Fed. 893; Colasurdo *v.* Central R. of N. J., *supra*. *Contra*, Taylor *v.* Southern Ry. Co., 178 Fed. 380. A wrecking crew would seem to be in the same category.